

**REMARKS**

Claims 1-28, and 57-64 are pending in the application. Claims 1-28, 57 and 58 are rejected. Claims 29-56 are withdrawn from consideration and are hereby canceled. Claims 59-61 are added via this Amendment.

**35 U.S.C. § 102:**

*Claims 1 and 57-58 - Bro*

Claims 1 and 57-58 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bro (U.S. Patent 5,722,418). Applicant respectfully traverses this rejection in view of the following remarks.

Bro does not disclose each feature recited in amended claim 1. Instead, Bro is directed to a method of mediating social and behavioral influence through interactive telecommunications systems, such that a physician or counselor may provide a series of motivational messages for a client to hear. The present invention provides a novel device for allowing a user to efficiently access music and/or video information.

In particular, amended claim 1 recites, *inter alia*:

“a first telephony platform for receiving a command from a user’s access device and for generating a menu containing criteria options relating to at least one of a music track and a video track so that the user can make a selection;”

The method in Bro of mediating social behavior through an interactive system does not disclose the features of claim 1, regarding at least the first telephony platform, including the menu aspects relating to the recited at least one of a music track and a video track. Applicant submits that "all words in a claim must be considered in judging the patentability of [the] claim against the prior art." Further, for a reference to anticipate a claim, the "identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989), *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). Moreover, a "functional limitation is an attempt to define something by what it does, rather than by what it is..." (See MPEP §2173.05(g).) There is nothing inherently wrong with defining some part of an invention in functional terms. (*Id.*) Therefore, each feature recited in claim 1 must be given weight and cannot be ignored. Bro does not teach each feature of claim 1, including the first telephony platform and its related recitations.

Furthermore, it is well settled that there is a "heavy presumption" that claim terms mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art. *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed. Cir. 2002); see also *K-2 Corp. v. Saloman S.A.*, 191 F.3d 1356, 1365 (Fed. Cir. 1999) (noting that claim construction "is firmly anchored in reality by the understanding of those of ordinary skill in the art"). An invention identical to what is presently claimed is not disclosed by the applied references, nor would one skilled in the art be taught a "music track" or a "video track"

based only on a disclosure of an “audio track.” An audio track alone does not teach a music or video track, without a more specific disclosure, which is clearly not present in this case.

Applicant therefore submits that the rejection of claim 1 under 35 U.S.C. § 102(b) should be withdrawn, along with the rejection of dependent claims 57 and 58.

*Claims 1 and 57-58 - Ellis*

Claims 1 and 57-58 are rejected under 35 U.S.C. § 102(e) as being anticipated by Ellis et al. (PGPUB-DOCUMENT-NUMBER: 20030188313). Applicant respectfully traverses this rejection in view of the following remarks.

Ellis is drawn to an electronic program scheduling system that allows a viewer to order a television program or movie using a remote control. This includes providing a video display such that the user can view the available programs and select a program for purchase using the remote control.

Ellis does not teach or even suggest the aspects of claim 1, including at least the first telephony platform for receiving a command from a user’s access device and for generating a menu containing criteria options relating to at least one of a music track and a video track so that the user can make a selection. One skilled in the art clearly would not have been taught these claimed features in view of Ellis’ device that is for purchasing programs using a TV display and a remote control.

A telephony platform, as would have been understood by one skilled in the art at the time of the invention, is not disclosed by a device for sending a signal to a television for the purpose of providing an electronic program guide (EPG) via a cablecast or satellite transmission. (See paragraph 94 of Ellis). The claimed telephony platform contributes to the novel aspects of claim 1 and is not taught by the disclosure of Ellis. In particular, a telephony platform includes a certain architectural design for a particular telecommunication application, as would be understood by one skilled in the art. Ellis does not disclose such a feature through its device for broadcasting and displaying television program information, and is not a telephony platform as in the present invention.

Accordingly, Applicant submits that claim 1 is not anticipated by Ellis such that the rejection thereof under 35 U.S.C. § 102(e) should be withdrawn. The rejection of claims 57 and 58 should likewise be withdrawn at least by virtue of their respective dependencies on claim 1.

**35 U.S.C. § 103:**

Claims 2, 3, 25-28, 57 and 58 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis in view of Foladare et al. (U.S. Patent 6,343,115 [hereinafter "Foladare"]). Applicant respectfully traverses this rejection in view of the following remarks.

Ellis fails to disclose the claimed features for the reasons set forth above. Foladare was applied in the previous Office Action and involves "call completion," which provides an improvement to an already known method of conducting a telephone call over the internet. This allows for two parties to coordinate a conversation by allowing a caller to alert a called party, via

a pager, when the caller wishes to initiate a call. Foladare does not, however, disclose the claimed features, nor would one have been taught or suggested the features of claim 1 based on Foladare. As one skilled the art would appreciate, Foladare does not teach nor suggest the telephony platform for *receiving a command from a user's access device and for generating a menu containing criteria options relating to at least one of a music track and a video track so that the user can make a selection*. Nor would one have found these features obvious in view of Foladare.

Applicant therefore submits that claims 2, 3, 25-28, 57 and 58 are patentable over Ellis in view of Foladare at least by virtue of their respective dependencies on claim 1, in addition to their individual recitations.

*Claims 4 and 14*

Claims 4 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis in view of Foladare and further in view of Barbara et al. (U.S. Patent 5,926,789 [hereinafter "Barbara"])). Applicant respectfully traverses this rejection in view of the following remarks.

The Examiner acknowledges that Ellis and Foladare do not disclose "music" tracks. The Examiner then cites Barbara for allegedly teaching an "audio track." However, Applicant submits that Barbara does not make up for the deficiencies of Ellis and Foladare in regard to claim 1. For example, the mere disclosure of an "audio track" would not have taught nor suggested at least the recited telephony platform for receiving a command from a user's access device and for generating a menu containing criteria options relating to at least one of a music

track and a video track so that the user can make a selection. Applicant accordingly submits that claims 4 and 14 are patentable over the applied references at least by virtue of their dependency on claim 1.

*Claims 5-13, 15-20 and 21-24*

Claims 5-7, 9-10 and 12-13 are rejected under 35 U.S.C. § 103 as being unpatentable over Ellis in view of Foladare, in view of Barbara and further in view of Aktas et al. (U.S. Patent 6,459,776 [hereinafter Aktas]).

Claims 8, 11 and 15-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis in view of Foladare, in view of Barbara and in view of Kelkar et al. (U.S. Patent 6,182,128).

Claims 21-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ellis in view of Foladare and further in view of Stokes (U.S. Patent 4,870,515).

Applicant notes that the Examiner presents many of the same arguments, in the present action, regarding claims 5-13, 15-20 and 21-24, that were presented in the Office Action dated March 26, 2004. Applicant responded to that action on July 26, 2004 in detail with regard to each of the rejections and, therefore, refers the Examiner to those arguments in addition to submitting that claims 5-13, 15-20 and 21-24 are patentable at least by virtue of their respective dependencies on claim 1. This is because the additional application of Aktas, Kelkar and Stokes fails to make up for the deficient teachings of Ellis and Foladare.

**NEW CLAIMS:**

Applicants add new claims 59-61 to obtain more varied protection for the invention. These claims are submitted to be patentable over the applied references by virtue of their novel and unobvious features.

In view of the preceding amendments and remarks, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby earnestly solicited. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is kindly requested to contact the undersigned attorney at the local telephone number listed below.

The USPTO is directed and authorized to charge all additional required fees (except the Issue/Publication Fees) to our Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

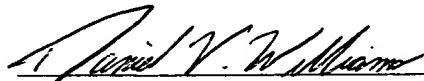
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**23373**

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